STATE OF MICHIGAN

COURT OF APPEALS

PETER E. SHEFMAN, individually and as Assignee of TERRACE LAND DEVELOPMENT CORP,

Plaintiff-Appellant,

v

LAW OFFICE OF ERNST ASSOCIATES, PLC, KEVIN ERNST, and HEATHER BENDURE,

Defendants-Appellees.

UNPUBLISHED
March 27, 2007

No. 269757
Wayne Circuit Court
LC No. 04-430220-NM

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from the order of the circuit court order granting summary disposition and awarding sanctions to defendants. We affirm. We decide this appeal without oral argument under MCR 7.214(E).

I. FACTS

In the summer of 2002, plaintiff, Peter E. Shefman, retained the Law Offices of Ernst & Associates, PLC, to represent him in two legal actions. A dispute arose between Shefman and Ernst & Associates over fees. Ernst & Associates sued Shefman in district court for its fee. Shefman counterclaimed, claiming that Ernst & Associates failed to render substantial and competent legal service and alleging fraud and lack of consideration as affirmative defenses. After a jury had been selected, Shefman and his attorney had a disagreement. Shefman's attorney withdrew, and a mistrial was declared. After Shefman retained new counsel, the parties put a settlement agreement on the record in open court, releasing each other of all claims against each other that occurred before that date. However, Shefman later refused to sign a written reduction of the agreement, which memorialized the in-court settlement. The district court entered an order settling the case, based on the settlement and release of claims placed on the record. Shefman appealed the district court's order to the circuit court, which affirmed the district court's order and denied Shefman's motion for reconsideration.

Meanwhile, Shefman, in propria person, sued Ernst & Associates, PLC, and its employees, Kevin Ernst and Heather Bendure in this action. Shefman alleged legal malpractice,

breach of contract, breach of fiduciary duty, fraud and conspiracy to defraud, unjust enrichment, conversion, and violation of the Michigan Consumer Protection Act based on Ernst & Associates' representation of him in the two cases.

Defendants moved for summary disposition and for sanctions. After some adjournments to accommodate plaintiff's health concerns, the trial court issued an opinion and order, without oral argument, granting defendants' motion for summary disposition and for sanctions. The court granted summary disposition based on the settlement order entered in the district court. The trial court also awarded sanctions, under MCR 2.114 and MCL 600.2591, reasoning that plaintiff's position was devoid of arguable legal merit because plaintiff was present when the settlement, including the mutual release of all claims arising out of any act up to the date of the settlement, was placed on the record. Plaintiff, who was also represented by counsel, was given the opportunity to speak on his own behalf and express his concerns, and all parties agreed to the settlement on the record. Although plaintiff was not an attorney, if he had conducted a reasonable inquiry into the factual and legal viability of the pleadings filed, as he had an affirmative obligation to do under MCR 2.114(D), he would have realized that the settlement and release order was binding.

On appeal, plaintiff argues that the circuit court erred in awarding sanction on the basis that his action was frivolous. We disagree.

II. STANDARD OF REVIEW

A trial court's decision whether a claim is frivolous is reviewed for clear error. *Szymanski v Brown*, 221 Mich App 423, 436; 562 NW2d 212 (1997). A decision is "clearly erroneous" if the reviewing court is left "with a definite and firm conviction that a mistake has been made." *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 91; 592 NW2d 112 (1999).

III. ANALYSIS

The trial court awarded sanctions under MCR 2.114(D) and MCL 600.2591(3)(a)(iii). If a court finds a violation of MCR 2.114(D) or MCL 600.2591(3)(a)(iii), it must impose sanctions. MCR 2.114(D) provides:

> The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
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> (1) he or she has read the document;
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> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

MCR 2.114(E) requires sanctions for violation of MCR 2.114(D) as follows:

> If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, *shall impose* upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages. [Emphasis added.]

MCL 600.2591(1) and (3)(a)(iii) provide:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action *shall award* to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
>
> * * *.
>
> (3) As used in this section:
>
> (a) "Frivolous" means that at least 1 of the following conditions is met:
>
> * * *
>
> (iii) The party's legal position was devoid of arguable legal merit. [(Emphasis added.]

Plaintiff's legal position was devoid of legal merit because any claim that he had against defendants in this case was released in the settlement that he approved on the record and the subsequent settlement order entered in the district court, which was affirmed on appeal in the circuit court, and which was not further appealed to this Court. An agreement between the parties or their attorneys made in open court is binding upon the parties. *Michigan Bell Telephone Co v Sfat*, 177 Mich App 506, 515; 442 NW2d 720 (1989); see also MCR 2.507(G).

Plaintiff's argument that he had reserved the right to pursue a malpractice claim in his responsive pleading to Ernst & Associates's action for its fees in district court lacks merit because the subsequent settlement order mutually released both parties, including Ernst & Associates's members, employees, and agents, from all claims arising from Ernst & Associates's representation of Shefman. Similarly, plaintiff's argument that his appeal of the settlement order was pending when he filed this action lacks merit. Plaintiff was uncertain about the legal validity of his claim because the appeal was pending when plaintiff filed this action. Further, after plaintiff received the denial of his appeal and the denial of his motion for reconsideration, he knew that the district court's settlement order was valid and that his claims against Ernst & Associates and its employees and agents had been released. Plaintiff could have voluntarily dismissed this action, but he did not. Instead plaintiff proceeded to litigate his claims, even though, on the basis of any reasonable inquiry, his claims were devoid of any legal merit and were, therefore, frivolous. Moreover, plaintiff's claim that he, as a layperson, should be held to a lesser standard lacks merit under the facts of this case. Although a layperson is held to a lower

standard of performance when litigating a claim, plaintiff has presented no authority that permits a lay person to file a frivolous claim.

Affirmed.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Bill Schuette